**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship and Immigration Services**

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 03 2009
SRC 07 800 22491

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a electronics engineer at LSI Corporation, Mendota Heights, Minnesota. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief and various exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on July 25, 2007. In a statement accompanying the initial submission, the petitioner (referring to himself in the third person) discussed his work:

> [The petitioner] has extensive research experience in the nationally crucial field of low power integrated circuits technology. . . . [The petitioner's] educational background, his professional experience, and unique set of research skills have enabled him to contribute significantly to this field and will allow him to continue to do so in the future. . . .

> Throughout his research career, [the petitioner] has continuously generated significant contributions to his field of research. The following is only a sampling of his many great achievements:
>
> 1. [The petitioner] proposed a series of new ideas to design ultra low power integrated circuits (IC). . . .
>
> 2. [The petitioner] proposed a novel technique for ultra low power Schmitt trigger design. . . . His 4 transistor Schmitt trigger is the smallest Schmitt trigger in the world.
>
> 3. [The petitioner] proposed the theory of noise contribution of the forward body-bias MOSFET [metal-oxide-semiconductor field effective transistor]. . . .
>
> 4. [The petitioner] studied the power loss during power conversion. His [*sic*] proposed an adaptive pulse-train technique. This pulse-train technique can control the power conversion in [a] very accurate way and reduce ripple of converted voltage, which represents a serious issue resulting in power loss.
>
> 5. [The petitioner] improved the technique for high efficient power conversion system. His designed power conversion system can track the temperature change and generate adaptive power supply.
>
> . . . He has a remarkable history of exceptional results and has repeatedly made significant contributions that will substantially benefit the United States. . . .
>
> [The petitioner's] past achievements allow for confidence in obtaining more contributions that would be lacking in anyone who does not have his kind of record. [The petitioner's] past achievements prove that he is especially qualified to make significant strides that are likely greater than those of his peers. Moreover, no labor certification could take into account this impressive record of success.

On the subject of labor certification, we note that, in September 2006, Micron Technology Texas, LLC, filed a Form I-140 petition (receipt number SRC 06 281 51561) on the alien's behalf, seeking to classify him as a member of the professions holding an advanced degree. That petition included an approved labor certification, filed June 28, 2006. The director approved that petition on December 28, 2006. In April 2007, for reasons unexplained, rather than adjust status based on the approved petition, the petitioner left Micron Technology in Texas to begin working for LSI in Minnesota. This information does not disqualify the petitioner from consideration for the waiver. It does, however, mean that we will obviously not entertain any arguments about alleged obstacles presented by the labor certification process.

The petitioner submitted copies of his published articles and other documentation of his work, including awards and certificates he received while a graduate student at Louisiana State University (LSU). An

exhibit list referred to a "U.S. Patent listing [the petitioner] as an inventor," but the corresponding document is a patent application, with no indication of approval.

The petitioner also submitted several witness letters, examples of which we discuss here. LSU [redacted] stated:

> Throughout these four years that he collaborated with me, [the petitioner] has performed as a researcher with extraordinary ability. Specially, he invented that smartly body-bias method in low power Schmitt trigger design . . . [which] contributed to further development of more complex low power integrated circuits.
>
> In addition . . . [h]e built up a novel physical model to give mathematic description and explanation of forward body-bias effect on noise for the first time. This development of noise model is important and provides a new method to study the noise mechanism of body-bias of MOSFET.
>
> . . . He has made innovative and original contributions to the field. . . . He is the most impressive and talented young researcher I have dealt with.

Manager of Research and Development of Preamplifier Design at LSI, stated:

> At LSI, [the petitioner] has proved an outstanding research and development engineer who possess[es] a deep commitment to scientific and engineering excellence through his low power pre-amp design. . . . His low power dissipation design is the key when competing with foreign IC companies.
>
> . . . Hard disk drive (HDD) . . . is one of the fastest growing markets as explosive demanding of storage capacity [*sic*]. [The petitioner] is now working on next generation low power high speed pre-amp, which is the intelligent intense core of HDD. . . . [The petitioner] is the most technically capable member of our team, and as such is an indispensable part of these projects.

[redacted] of the University of Washington, Seattle, stated:

> I consider [the petitioner] to be an outstanding researcher in the area of Electrical Engineering, specifically in the field of CMOS analog VLSI Circuits.
>
> I have been aware of [the petitioner's] research and development work . . . since about 2002, shortly after he began his Ph.D. studies at Louisiana State University. . . . [The petitioner's] research on low-voltage high-performance analog integrated circuits is critical to the US economy as CMOS technology continues to scale to ever-smaller dimensions according to Moore's Law. [The petitioner] has been a visionary leader in this vital research and development area. . . .

> [The petitioner] is among the top young integrated circuit design and development engineers in the world.

a Research Scientist at IBM's Almaden Research Center, San Jose, California, claimed to "have been following [the petitioner's] research closely for a long time," and stated that the petitioner "is a leading player" in low power integrated circuits.

On December 20, 2007, the director instructed the petitioner to submit documentary evidence of the petitioner's impact and influence on his field, including, but not limited to, evidence of citation of the petitioner's published work. In response, the petitioner submitted documentation of 10 published citations of his published work, not counting several self-citations by the petitioner and/or his co-authors.

The petitioner also submitted what he called "[f]our independent reference letters from famous researchers in the field." The first two witnesses are both fellows of the IEEE and editors-in-chief of IEEE journals.[1] [redacted] of the University of Southern California, Los Angeles (where the beneficiary earned his master's degree), stated that the petitioner's "research in low power integrated circuits and high efficiency power conversion integrated circuits has very important and direct applications to electronic industries."

[redacted] of the University of Rochester, New York, stated that the petitioner's "research is extremely important to the development of next generation of low power electronic devices." Describing the petitioner's work in greater detail, [redacted] stated:

> [The petitioner] developed a "forward-body-bias" method for lowering the threshold voltage of transistors, thereby reducing operational voltage of integrated circuits. This result is extremely important because this opens up a field of low power design on a new type of forward body-bias transistors, which contrasts with the conventional reverse body-bias transistors. . . . I closely observe his research results through his publications since his research is very fundamental and significant for low power applications.
>
> In 2003, [the petitioner] invented a novel low power design for a Schmitt trigger, which is a basic building block of integrated circuits. Based on his forward body bias technique, [the petitioner] further proposed an adaptive body bias method. By utilizing this method, he reduced the traditional six transistor Schmitt trigger circuitry to four transistors. This novel design reduced both design power dissipation and size. Because a Schmitt trigger is a basic building block [that] is used repeated frequently [*sic*] in integrated circuits, this design will dramatically reduce power in integrated circuits and therefore electronic products. . . .

[1] The initials "IEEE" derive from the organization's former name, the "Institute of Electrical and Electronics Engineers."

> [The petitioner] has combined his low power integrated circuits with biomedical neural probes thanks to the low power design, which is very critical in portable biomedical electronic device[s]. This is a pioneering research of [*sic*] in low power applications.

Director of the Ion Beam Laboratory at Texas A&M University, College Station, first met the petitioner at "a low power semiconductor conference." [redacted] called the petitioner "one of the most accomplished scientists in the field of low power integrated circuits design," whose "design has become a classic design in low voltage Schmitt trigger design."

[redacted] of the University of Louisiana at Lafayette praised the petitioner's "outstanding research on the low power integrated circuits," which "greatly improves my research. . . . The power consumption of my mobile telecommunication system is reduced to 50% by utilizing [the petitioner's] invention."

The director denied the petition on April 7, 2008. In the decision, the director acknowledged the petitioner's submission of witness letters, but stated "no research states that they used and applied your findings." The director also found that, while the petitioner is named on a patent application, the petitioner had submitted no evidence to show licensure or other commercial exploitation of that patent.

On appeal, the petitioner disputed the director's erroneous finding that the record contains no independent citations of the petitioner's work. There are not many independent citations, but there are some. The petitioner concedes that "the citation number is not very high," but claims this is because "the low power and energy saving technology is a newly emerging topic which was not seriously studied before recent high energy price[s]." The petitioner submits no evidence (such as citation statistics) to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Regarding the patent application, the petitioner states "a Patent Application can not be purchased or licensed before it becomes a granted Patent," and the patent application was not approved until March 2008. This observation explains why the petitioner has not exploited his patent, but it is certainly not an argument in favor of approval of the petition. The patented technology appears to be simply too new to have had any demonstrable impact yet, and the petitioner's self-serving expectations of future success cannot form a reasonable basis for a finding of eligibility.

The petitioner correctly states that the director erred in finding "no researcher states that they have used [the petitioner's] findings in their work." The petitioner quoted several references to witnesses' use of the petitioner's work, such as [redacted] assertion: "The power consumption of my mobile telecommunication system is reduced to 50% by utilizing [the petitioner's] invention."

The director was correct, however, on the broader point that the record does not show the petitioner's research to have been more influential than that of other researchers in the same

specialty. The petitioner has submitted highly complimentary letters from independent witnesses, but these letters cannot compensate for the lack of objective, documentary evidence of the petitioner's impact on his field. When a witness claims that one of the petitioner's designs is considered "a classic in the field," it is reasonable to expect some evidence to exist in support of that claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Assertions about the promise of the petitioner's work are, to a large extent, conjectural, and the petitioner cannot remedy a lack of existing impact by proposing that the impact is still in the future.

Considering the record as a whole, we must conclude that, at best, the petitioner filed the petition prematurely, before enough time had passed to justify his expectations of future success and impact.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.